

No. 16046.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

MILTON GRADY RAMSEY, Claimant of ONE 1955 FORD
SEDAN, Motor No. U5RW123141, its tools and appur-
tenances,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief, Civil Division,

BURTON C. JACOBSON,
Assistant U. S. Attorney,
600 Federal Building,
Los Angeles 12, California,
Attorneys for Appellee.

FILED

DEC 20 1958

PAUL P. O'BRIEN, CLERK



TOPICAL INDEX

	PAGE
Jurisdiction	1
Statutes involved	2
Statement of the case.....	3
Summary of argument.....	5
Argument.....	6

I.

The evidence supports the trial court's findings that the 1955 Ford Sedan, Motor No. U5RW123141, its tools and appurtenances, have been used to transport, possess, buy, sell and transfer certain distilled spirits, the immediate containers of which did not have affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all internal revenue taxes imposed on such spirits, in violation of Title 26, United States Code, Section 5008(b)(1)	6
---	---

II.

The judgment is not contrary to law because the use of the seized automobile to transport, possess, buy, sell and transfer certain distilled spirits, the immediate containers of which did not have affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all internal revenue taxes imposed on such spirits, in violation of United States Code, Section 5008-(b)(1), comes within the meaning of Section 7302 of the Internal Revenue Code, which subjects an automobile to forfeiture when it is, . . . "intended for use in violating . . . the Internal Revenue Laws . . . or which has been so used . . . ".....	10
---	----

III.

The seizure of the subject Ford sedan automobile was legal and further the law of search and seizure does not apply to the res in an in rem libel proceeding.....	12
Conclusion	16

TABLE OF AUTHORITIES CITED

CASES	PAGE
Anderson v. United States, 195 F. 2d 343.....	11
Austin v. United States, 125 F. 2d 816.....	6
Bourke v. United States, 44 F. 2d 371, cert. den. 282 U. S. 897	13
Fidelity and Casualty Company of New York v. Phelps, et ux., 64 F. 2d 233.....	10
Harman v. United States, 199 F. 2d 34.....	11
Local 167 of the International Brotherhood of Teamsters, Chauffers, Stablemen and Helpers v. United States, 291 U. S. 293.....	6
National Surety Company v. Globe Grain and Milling Com- pany, 256 Fed. 601.....	10
Ramsey v. United States, 245 F. 2d 295.....	12
Shiveley v. United States, 210 F. 2d 131.....	11
Stagecrafter's Club, Inc. v. District of Columbia Division, 111 Fed. 127	6
Strong v. United States, 46 F. 2d 257, appeal dism. 284 U. S. 691	13
Ted's Motors v. United States, 217 F. 2d 777.....	15
United States v. Bower, 95 Fed. Supp. 19.....	6
United States v. 8 Boxes, etc., 105 F. 2d 896.....	13
United States v. One 1950 Buick Sedan, 231 F. 2d 219.....	15
United States v. One 1954 Chevrolet 4-Door Sedan, 244 F. 2d 342	11
United States v. General Motors Acceptance Corporation, 239 F. 2d 102.....	11
United States v. 1952 Lincoln Sedan, 213 F. 2d 768.....	11
United States v. 1955 Mercury Sedan, 242 F. 2d 429.....	11
United States v. 1953 Model Glider Trailer, 120 Fed. Supp. 504	11

PAGE

United States v. 16-54-B Oakland Touring Automobile, 9 F. 2d 635	15
United States v. Pacific Finance Corporation, 110 F. 2d 732....	13
United States v. One 1949 Pontiac Sedan, 194 F. 2d 756.....	13
United States v. Wainer, 211 F. 2d 669.....	6
United States v. Windle, 158 F. 2d 196.....	11
Woodbury, et al. v. City of Shawnee Town, 74 Fed. 205.....	10

RULES

Federal Rules of Civil Procedure, Rule 26(f).....	7
Federal Rules of Civil Procedure, Rule 43(b).....	7
Rules of the United States Court of Appeals for the Ninth Circuit, Rule 18(d).....	12

STATUTES

United States Code, Title 26, Sec. 5008.....	4
United States Code, Title 26, Sec. 5008(b).....	2
United States Code, Title 26, Sec. 5008(b)(1).....	4, 7, 9, 11
United States Code, Title 26, Sec. 7302.....	3, 10, 11
United States Code, Title 28, Sec. 1291.....	2
United States Code, Title 28, Sec. 1294(1).....	2
United States Code, Title 28, Sec. 1355.....	1
United States Constitution, Fourth Amendment.....	12, 13

TEXTBOOK

5 Wigmore, Evidence (3d Ed., 1940), Sec. 1671a.....	6
---	---



No. 16046.
IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

MILTON GRADY RAMSEY, Claimant of ONE 1955 FORD
SEDAN, Motor No. U5RW123141, its tools and appur-
tenances,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

Jurisdiction.

The United States District Court had jurisdiction to render its judgment in the action entitled *United States of America v. One 1955 Ford Sedan, Motor No. U5RW123141, its tools and appurtenances*, Civil No. 19773-T, pursuant to the authority contained in Title 28, United States Code, Section 1355. There is no dispute that the libeled automobile is and was at all times within the Central Division of the Southern District of California.

This court has jurisdiction of this appeal from the Findings of Fact, Conclusions of Law and Final Judgment of the District Court in favor of the appellee and against the appellant ordering the said 1955 Ford Sedan,

Motor No. U5RW123141, its tools and appurtenances, condemned and forfeited to the United States of America. Under the provisions of Title 28, United States Code, Sections 1291 and 1294(1) said judgment and order was a final decision of the District Court.

Statutes Involved.

Title 26, United States Code:

“Section 5008(b) Stamps for containers of other distilled Spirits.—

(1) Requirements.—No person shall transport, possess, buy, sell, or transfer any distilled spirits, unless the immediate container thereof has affixed thereto in such manner as to be broken on opening the container, a stamp evidencing the tax or indicating compliance with the provisions of this chapter. The provisions of this subsection shall not apply to—

(A) distilled spirits placed in containers for immediate consumption on the premises or for preparation for such consumption;

(B) distilled spirits in bond or in customs custody;

(C) distilled spirits in immediate container required to be stamped under subsection (a) or under other provisions of internal revenue or customs law and regulations;

(D) distilled spirits in actual process of rectification, blending, or bottling, or in actual use in processes of manufacture;

(E) distilled spirits on which no internal revenue tax is required to be paid or which are bottled especially for export with benefit of drawback;

(F) distilled spirits not intended for sale; or for use in the manufacture or production of any article intended for sale; or

(G) any regularly established common carrier receiving, transporting, delivering, or holding for transportation or delivery distilled spirits in the ordinary course of its business as a common carrier.

“Title 26, United States Code, Section 7302. *Property used in violation of internal revenue laws.*

It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws. Aug. 16, 1954; 9:45 a.m., E.D.T., c. 736, 68A Stat. 867.”

Statement of the Case.

This is an appeal from the decision of the District Court condemning and forfeiting One 1955 Ford Sedan, Motor No. U5RW123141, its tools and appurtenances, to the United States of America for its use to transport, possess, buy, sell and transfer certain distilled spirits, the

immediate containers of which did not have affixed thereto stamps denoting the quantity of those spirits contained therein and evidencing payment of all internal revenue taxes imposed on such spirits, in violation of Title 26, United States Code, Section 5008(b)(1).

Appellant is the claimant and registered owner of the subject Ford automobile. The evidence, and all reasonable inferences drawn therefrom by the trier of fact, shows that the vehicle was used to transport, possess, buy, sell and transfer certain distilled spirits as stated above, so as to subject the car to forfeiture. Appellant, at the time of the seizure, had never paid any of the taxes due on the said distilled spirits nor did he obtain the necessary strip stamps as required by Section 5008, Title 26, United States Code.

On or about September 15, 1955, duly authorized and acting investigators of the Alcohol and Tobacco Tax Division, Internal Revenue Service, Treasury Department of the United States, seized the said 1955 Ford Sedan automobile in the County of Los Angeles, State of California. Thereafter, the Government filed its Libel of Information wherein it alleged the illegal use of the vehicle in connection with the appellant's distillation activities which subjected the car to condemnation and forfeiture.

The appellant filed an Answer to the Government's Libel of Information. At the conclusion of the trial the District Court gave judgment in favor of the Government and ordered the condemnation and forfeiture, to the United States, of the 1955 Ford Sedan.

Summary of Argument.

I.

THE EVIDENCE SUPPORTS THE TRIAL COURT'S FINDINGS THAT THE 1955 FORD SEDAN, MOTOR NO. U5RW123141, ITS TOOLS AND APPURTENANCES, HAVE BEEN USED TO TRANSPORT, POSSESS, BUY, SELL AND TRANSFER CERTAIN DISTILLED SPIRITS, THE IMMEDIATE CONTAINERS OF WHICH DID NOT HAVE AFFIXED THERETO STAMPS DENOTING THE QUANTITY OF DISTILLED SPIRITS CONTAINED THEREIN AND EVIDENCING PAYMENT OF ALL INTERNAL REVENUE TAXES IMPOSED ON SUCH SPIRITS, IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 5008(b)(1).

II.

THE JUDGMENT IS NOT CONTRARY TO LAW BECAUSE THE USE OF THE SEIZED AUTOMOBILE TO TRANSPORT, POSSESS, BUY, SELL AND TRANSFER CERTAIN DISTILLED SPIRITS, THE IMMEDIATE CONTAINERS OF WHICH DID NOT HAVE AFFIXED THERETO STAMPS DENOTING THE QUANTITY OF DISTILLED SPIRITS CONTAINED THEREIN AND EVIDENCING PAYMENT OF ALL INTERNAL REVENUE TAXES IMPOSED ON SUCH SPIRITS, IN VIOLATION OF UNITED STATES CODE, SECTION 5008(b)(1), COMES WITHIN THE MEANING OF SECTION 7302 OF THE INTERNAL REVENUE CODE, WHICH SUBJECTS AN AUTOMOBILE TO FORFEITURE WHEN IT IS, . . . "INTENDED FOR USE IN VIOLATING . . . THE INTERNAL REVENUE LAWS . . . OR WHICH HAS BEEN SO USED. . . ."

III.

THE SEIZURE OF THE SUBJECT FORD SEDAN AUTOMOBILE WAS LEGAL AND FURTHER THE LAW OF SEARCH AND SEIZURE DOES NOT APPLY TO THE RES IN AN IN REM LIBEL PROCEEDING.

ARGUMENT.

I.

The Evidence Supports the Trial Court's Findings That the 1955 Ford Sedan, Motor No. U5RW-123141, Its Tools and Appurtenances, Have Been Used to Transport, Possess, Buy, Sell and Transfer Certain Distilled Spirits, the Immediate Containers of Which Did Not Have Affixed Thereto Stamps Denoting the Quantity of Distilled Spirits Contained Therein and Evidencing Payment of All Internal Revenue Taxes Imposed on Such Spirits, in Violation of Title 26, United States Code, Section 5008(b)(1).

I.

At the trial of this case, the court received in evidence the record of conviction of the claimant, Milton Grady Ramsey, in case number 24515-CD in the United States District Court, in and for the Southern District of California, Central Division. The record of conviction consisted of the indictment, the verdict, and the judgment on the verdict. The receipt of such evidence by the court was proper.

United States v. Wainer, 211 F. 2d 669 (C. A. 7, 1954);

Local 167 of the International Brotherhood of Teamsters, Chauffers, Stablemen and Helpers v. United States, 291 U. S. 293;

Austin v. United States, 125 F. 2d 816 (C. A. 7);
Stagecrafter's Club, Inc. v. District of Columbia Division, 111 Fed. 127 (D. C.);

United States v. Bower, 95 Fed. Supp. 19 (D. C.);
5 Wigmore, Evidence (3d Ed., 1940), Sec. 1671a.

The above authority stands for the proposition of law that the record of a party's conviction in a previous criminal proceeding may properly be admitted in evidence in a civil action arising out of the same factual situation.

Counts II, III and IV of the indictment against the claimant, Milton Grady Ramsey, of which he was found guilty, shows that he, Milton Grady Ramsey, did carry on and engage in the business of a distiller and rectifier of distilled spirits with intent to defraud the United States of the tax on the spirits distilled by him. And further that the appellant refused to give notice thereof which is required by the Internal Revenue Code and that he willfully failed to pay the special tax as required by the Internal Revenue Code. In Count V of the indictment, it is shown that he, Milton Grady Ramsey, did possess distilled spirits, namely, approximately forty gallons of distilled spirits, the immediate containers of which did not have affixed to them a stamp denoting the quantity of distilled spirits contained therein and evidencing payment of all internal revenue taxes imposed on such spirits, in violation of United States Code, Title 26, Section 5008 (b)(1).

The deposition of the claimant, Milton Grady Ramsey, taken on June 6, 1957, was next offered and received in evidence. Such offer and receipt in evidence by the court was proper under Rules 26(f) and 43(b) of the Federal Rules of Civil Procedure. Mr. Ramsey, in his deposition, admitted the distillation of spirits and that he had not paid any of the taxes or obtained any of the necessary stamps and permits at the time of the seizure of the subject Ford vehicle. He further admitted making many gallons of distilled spirits; that he had a still of one hundred-gallon capacity, and that he had twelve or so

fifty-gallon fermenting barrels. He also had on the premises many gallon jugs which he claimed were brought there from a restaurant that he owned a year previous, and which were empty soda syrup containers. He further stated that he used the one-gallon jugs to give away the spirits he distilled to people and seldom gave away more than one, two or three gallons at a time. He also admitted that aside from the one-hundred-gallon capacity still with a coil condenser and rectifier and the twelve or so fifty-gallon fermenting barrels that he also had approximately five-hundred and fifty pounds of corn starch sugar, approximately five gallons of dextrose malt, a mash pump and motor, and miscellaneous hoses, hydrometers and thermometers which were used in connection with the distillation of spirits and which were on his premises as of the date of seizure, September 15, 1955.

Mr. Ramsey further stated in his deposition that since he closed his restaurant in 1954, approximately a year before the seizure, that he had no source of income.

From this evidence the court made certain findings and drew certain inferences which appear in the Reporter's Transcript of Proceedings, dated Wednesday, December 18, 1957, pages 1 through 13. The court remarked that the distillation, although contended to be only a sideline, and even though Ramsey was denied the benefit of the income he formerly enjoyed from his business, he would have the court believe that he engaged in what might be termed a large scale distilling operation merely for the purpose of experimenting without seeking remuneration or profit. The court found this to be unbelievable and further found that it strained the court's imagination to accept the explanation that the forty jugs filled with distilled spirits and distributed in small lots, were delivered

to different people who, in all cases, called for and picked up the intoxicating spirits on the claimant's premises. The court inferred and found in view of the close proximity of the respondent Ford automobile and the bottled spirits that out of the admitted forty gallons disposed of, some must have been delivered by car. Further, the court inferred that the delivery of distilled spirits by automobile was an integral part of the operation of Ramsey. The court concluded that in view of all the inconsistencies contained in the story of the claimant, Ramsey, and the claimant's unpersuasive explanation of his motives and actions, that it would and did draw inferences that the claimant was an interested witness and was attempting to camouflage his activities for the purpose of avoiding forfeiture and that he did in fact use the subject 1955 Ford automobile to deliver the untaxpaid spirits.

The appellee contends that the inferences drawn from the evidence were reasonable and proper and that the evidence and inferences clearly support the findings of the court that the subject 1955 Ford sedan automobile had been used to transport, possess, buy, sell and transfer certain distilled spirits, the immediate containers of which did not have affixed thereto stamps denoting the quantity of distilled spirits contained therein and evidencing payment of all internal revenue taxes imposed on such spirits, in violation of Title 26, United States Code, Section 5008(b)(1).

It is a well-recognized principle that a trial judge's findings of fact are never to be lightly disturbed by a reviewing court. Generally, appellate courts will not overturn findings of fact of the trial judge, since he has had the opportunity to hear and see the witnesses. The trial judge's findings must be given great weight and should

be binding, unless clearly based on an obvious error of law, or a serious mistake or misconception of a fact.

National Surety Company v. Globe Grain and Milling Company, 256 Fed. 601 (C. A. 9);

Woodbury, et al. v. City of Shawnee Town, 74 Fed. 205 (C. A. 7);

Fidelity and Casualty Company of New York v. Phelps, et ux., 64 F. 2d 233 (C. A. 4).

II.

The Judgment Is Not Contrary to Law Because the Use of the Seized Automobile to Transport, Possess, Buy, Sell and Transfer Certain Distilled Spirits, the Immediate Containers of Which Did Not Have Affixed Thereto Stamps Denoting the Quantity of Distilled Spirits Contained Therein and Evidencing Payment of All Internal Revenue Taxes Imposed on Such Spirits, in Violation of United States Code, Section 5008(b)(1), Comes Within the Meaning of Section 7302 of the Internal Revenue Code, Which Subjects an Automobile to Forfeiture When It Is, . . . "Intended for Use in Violating . . . the Internal Revenue Laws . . . or Which Has Been so Used . . ."

The types of uses to which the appellant, Mr. Ramsey, put the subject vehicle have been held by courts to be sufficient to justify seizure and forfeiture of the vehicle pursuant to Section 7302 of Title 26, United States Code. In this case, the court found that the subject Ford automobile was used to transport, possess, buy, sell and transfer certain distilled spirits, the immediate containers of which did not have affixed thereto stamps denoting the quantity of said distilled spirits contained therein in evidencing payment of all internal revenue taxes imposed on such spirits, in violation of Title 26, United States Code,

Section 5008(b)(1). The cases are legend in permitting forfeitures of vehicles which have been used as described above.

United States v. Windle, 158 F. 2d 196;

Anderson v. United States, 195 F. 2d 343;

United States v. 1953 Model Glider Trailer, 120 Fed. Supp. 504;

United States v. 1952 Lincoln Sedan, 213 F. 2d 768;

Shiveley v. United States, 210 F. 2d 131;

Harman v. United States, 199 F. 2d 34;

United States v. One Chevrolet 4-Door Sedan, 1954 Model, 244 F. 2d 342;

United States v. 1955 Mercury Sedan, 242 F. 2d 429.

The last cited *Mercury Sedan* case is important because it holds that circumstantial evidence, including a showing that within twenty-two feet of the place where the subject automobile had stopped, four or five gallon jugs of moonshine whiskey were found, warranted the forfeiture of that automobile on the ground that it was used in the transportation of untaxpaid liquor.

It should be noted that the cases also hold that Section 7302 is a broad section and one that should not be strictly construed.

United States v. General Motors Acceptance Corporation, 239 F. 2d 102 (C. A. 5).

Since Section 7302 of the Internal Revenue Code is, in its plain reading, a very broad statute, such use of a vehicle as was shown and found in this case falls clearly within its meaning and subjects the vehicle to forfeiture.

The clear intention of Congress in the passage of such a broad section appears to be to double and increase the penalties involved in violations of the Internal Revenue Act so as to discourage persons who engage in such violations. It is not the duty of courts to change this procedure by way of judicial legislation but is a policy matter solely within the discretion of Congress.

III.

The Seizure of the Subject Ford Sedan Automobile Was Legal and Further the Law of Search and Seizure Does Not Apply to the Res in an In Rem Libel Proceeding.

Appellant contends that the court erred in overruling the objections to the introduction to the evidence on the grounds that the car was not legally seized in violation of the Fourth Amendment to the Constitution of the United States. However, appellant does not set forth what evidence he claims was improperly introduced as is required by Local Rule 18(d). Therefore, on the basis of appellant's argument the appellee can only assume that the appellant objects to the introduction of all evidence.

As to the claim of illegal search and seizure of the vehicle, it should be noted that this court decided this very same issue in the case of *Ramsey v. United States*, 245 F. 2d 295, wherein it was determined that there was no illegal search and seizure.

Further, it is the appellee's contention that the law of search and seizure, although properly complied with in this case, does not apply to a libel action where the proceeding is *in rem*. The privilege of the Fourth Amendment to the United States Constitution is personal and can only be claimed by the person whose rights have been

invaded. Since a libel action is *in rem* no personal rights can be involved. It is the appellee's contention that only probable cause need be shown for the seizure and if such probable cause is shown then the seizure is proper. It is only at the time of trial of the general issue that the Government need prove the elements essential for the decree of forfeiture.

The law as it relates to the problems of illegal search and seizure and the protections of the Fourth Amendment is held by the vast weight of majority opinion not to be applicable in a libel case. Rather, the vast weight of authority is that an illegal search and seizure will not vitiate the seizure in a libel.

United States v. 8 Boxes, etc., 105 F. 2d 896 (C. A. 2);

United States v. Pacific Finance Corporation, 110 F. 2d 732 (C. A. 2);

Strong v. United States, 46 F. 2d 257 (C. A. 1), appeal dis. per stip., 284 U. S. 691;

Bourke v. United States, 44 F. 2d 371, cert. den., 282 U. S. 897 (C. A. 6).

On the point that all the federal agent needs is probable cause for the seizure, the Government cites *United States v. One 1949 Pontiac Sedan*, 194 F. 2d 756, and particularly refers to the statements of the court on page 759 where it is stated:

"Thus we are faced initially with the question: What is meant by probable cause as that term is used in Section 1615? The Supreme Court was confronted with an identical problem of definition as early as 1813 in the case of *Locke v. United States*, 7 Cranch. 339, 11 U. S. 339, 3 L. Ed. 364. There an action was brought under a statute strikingly

similar to the one here involved, providing that in a libel proceeding for forfeiture of goods improperly imported into the United States, 'if the property be claimed by any person * * * the onus probandi shall lie upon such claimant. * * * but * * * only where probable cause is shown for such prosecution * * *.' 1 Stat. 678. Chief Justice Marshall, writing for a unanimous court, stated: 'It is contended that probable cause means *prima facie* evidence, or, in other words, such evidence as in the absence of exculpatory proof would justify condemnation. * * * This would render the provision totally inoperative. * * * The term * * * according to its usual acceptance, means less than evidence which would justify condemnation; * * * It imports a seizure made under circumstances which warrant suspicion.' See also *Wood v. United States*, 16 Pet. 342, 41 U. S. 342, 10 L. Ed. 987 ('reasonable ground of presumption that the charge is or may be, well founded'); *Moore Ice Cream Co. v. Rose*, 289 U. S. 373, 53 S. Ct. 620, 77 L. Ed. 1265 ('reasonable suspicion'); *Carroll v. United States*, 267 U. S. 132, 45 S. Ct. 280, 69 L. Ed. 543 ('reasonable ground for belief in guilt'). But recently in *Brinegar v. United States*, 338 U. S. 160, 175, 69 S. Ct. 1302, 93 L. Ed. 1879, while deciding a question of probable cause under the search and seizure provisions of the Fourth Amendment, the Court departed from the test of 'suspicion.' However, it alluded to Chief Justice Marshall's statement that the phrase 'means less than evidence which would justify condemnation,' i.e., less than *prima facie* evidence.

"Thus, from these and other decisions it appears correct to conclude that probable cause, as used in this context, is less than *prima facie* proof, but more than mere suspicion. Lying somewhere in the hiatus between these two extremities the semanticist would

find its precise meaning. However, such meticulous precision is not needed for practical application. See *United States v. One Dodge Coupe*, D. C., S. D., N. Y., 43 F. Supp. 60, 62. Suffice it to say that we believe that, if the facts are of such a nature as to support a reasonable belief of a violation of the statute probable cause has been shown.”

The cases are well agreed that in order to show probable cause, a *prima facie* case for forfeiture need not be proved.

United States v. One 1950 Buick Sedan, 231 F. 2d 219 (C. A. 3, 1956);

Ted's Motors v. United States, 217 F. 2d 777 (C. A. 8, 1954);

United States v. 16-54-B Oakland Touring Automobile, 9 F. 2d 635 (D. C. Ariz., 1925).

The courts have also held that hearsay evidence as to the reasons for the institution of the action or forfeiture is admissible and competent with respect to proving probable cause as was stated in *Ted's Motors v. United States*, 217 F. 2d 777, 780 (C. A. 8, 1954):

“We have no doubt that information of guilt, even though hearsay and incompetent with respect to the merits of the case such as the instant one, may constitute probable cause, or, in other words, a reasonable ground for a belief in guilt, justifying the institution of the action. Any other rule would seem to be illogical, unrealistic, and opposed to everyday human experience.” (See cases cited therein.)

On the basis of the foregoing the appellee contends that there is no merit to the appellant's claim of illegal search and seizure and that said protections of the Fourth Amendment do not apply in an *in rem* libel proceeding such as the instant case.

Conclusion.

On the basis of all the foregoing argument and authority the appellee respectfully submits that the decision of the District Court should be affirmed on appeal.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief, Civil Division,

BURTON C. JACOBSON,
Assistant U. S. Attorney,
Attorneys for Appellee.